

1 SENATE BILL 342

2 **55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021**

3 INTRODUCED BY

4 Elizabeth "Liz" Stefanics

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10 AN ACT

11 RELATING TO HEALTH; ENACTING THE MEDICAID WAIVER WAGE FAIRNESS  
12 AND WORKFORCE ACT; REQUIRING PROVIDER AGENCIES THAT PROVIDE  
13 SERVICES THROUGH CERTAIN MEDICAID WAIVER PROGRAMS TO INCREASE  
14 COMPENSATION FOR CERTAIN STAFF WHEN REIMBURSEMENT RATES  
15 INCREASE; REQUIRING PROVIDER AGENCIES TO MAINTAIN RECORDS AND  
16 REPORT ON STAFF COMPENSATION; PROVIDING FOR THE RECOUPMENT OF  
17 REIMBURSEMENT RATE INCREASES PAID TO PROVIDER AGENCIES UNDER  
18 CERTAIN CIRCUMSTANCES; REQUIRING PROVIDER AGENCIES TO COLLECT  
19 AND REPORT DATA REGARDING THE DIRECT SUPPORT PROFESSIONAL  
20 WORKFORCE.

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22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

23 SECTION 1. [NEW MATERIAL] SHORT TITLE.--This act may be  
24 cited as the "Medicaid Waiver Wage Fairness and Workforce Act".

25 SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the

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1 Medicaid Waiver Wage Fairness and Workforce Act:

2 A. "compensation" means any form of monetary  
3 payment, employer-paid health and other insurance programs,  
4 paid time off, payroll taxes and all other fixed and variable  
5 benefits conferred on or received by direct support  
6 professional staff;

7 B. "department" means the department of health;

8 C. "direct support professional" means a person  
9 employed by a provider agency who provides a range of  
10 supportive services to individuals with an intellectual or  
11 developmental disability on a day-to-day basis to enable those  
12 individuals to live and work in their communities;

13 D. "intellectual and developmental disability  
14 program" means the developmental disabilities medicaid waiver  
15 or the medically fragile medicaid waiver authorized pursuant to  
16 Section 1915(c) of the federal Social Security Act and  
17 administered by the department;

18 E. "provider agency" means an entity that:

19 (1) has entered into a medicaid provider  
20 participation agreement with the medical assistance division of  
21 the human services department and a provider agreement with the  
22 department;

23 (2) is eligible to be reimbursed for services  
24 provided to individuals through an intellectual and  
25 developmental disability program; and

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1 (3) employs direct support professionals to  
2 furnish services to those individuals with an intellectual or  
3 developmental disability; and

4 F. "reimbursement rate" means the amount of the fee  
5 set by the department or by the human services department to  
6 compensate entities providing services through an intellectual  
7 and developmental disability program.

8 SECTION 3. [NEW MATERIAL] REIMBURSEMENT RATE INCREASES TO  
9 BE PASSED ON TO DIRECT SUPPORT PROFESSIONALS.--When the  
10 reimbursement rates paid to a provider agency for services  
11 provided through an intellectual and developmental disability  
12 program and performed by a direct support professional are  
13 increased, at least seventy percent of the additional funds  
14 shall be used to increase compensation.

15 SECTION 4. [NEW MATERIAL] REPORTING TOOL--CREATION--  
16 USE.--The department shall create a reporting tool, and  
17 provider agencies shall use the reporting tool to track and  
18 report to the department, on a schedule to be determined by the  
19 department:

20 A. how increased reimbursement rates have been used  
21 to increase compensation; and

22 B. data to enable the department to evaluate the  
23 status of the direct support professional workforce, including:

24 (1) the number of full-time and part-time  
25 direct support professional staff employed by the provider

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1 agency;

2 (2) measures of employment stability,  
3 including vacancy and turnover rates;

4 (3) employee qualifications such as training  
5 and certification; and

6 (4) compensation provided.

7 SECTION 5. [NEW MATERIAL] PROVIDER AGENCY RECORDKEEPING  
8 REQUIREMENTS--COMPENSATION.--

9 A. Each provider agency shall:

10 (1) maintain all books, documents, records and  
11 other evidence required to support the reporting of information  
12 described in Section 4 of the Medicaid Waiver Wage Fairness and  
13 Workforce Act for at least three years from the reporting  
14 deadline set by the department; and

15 (2) make the information and materials  
16 available for inspection by the department or its designee at  
17 all reasonable times.

18 B. If the department has reason to believe that a  
19 provider agency has not used the required portion of a  
20 reimbursement rate increase to increase compensation, as  
21 required by Section 3 of the Medicaid Waiver Wage Fairness and  
22 Workforce Act, the department may at any time request  
23 information from the provider agency on how it used increased  
24 funding to increase compensation.

25 SECTION 6. [NEW MATERIAL] RECOUPMENT OF REIMBURSEMENT

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1 RATE INCREASES.--The department may recoup from the provider  
2 agency all or part of the reimbursement rate increase if the  
3 department determines that the provider agency:

4 A. did not use the rate increase to increase  
5 compensation as required by Section 3 of the Medicaid Waiver  
6 Wage Fairness and Workforce Act; or

7 B. failed to track and report how it used the  
8 increase in the reimbursement rate as required by Section 4 of  
9 the Medicaid Waiver Wage Fairness and Workforce Act.